

MEMORANDUM

Agenda Item No. 7(B)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: September 3, 2014

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Ordinance creating Section 2-8.2.12 of the Code; delegating to the County Mayor the authority to advertise, award, amend and negotiate contracts for goods and services, construction and professional services for the Miami-Dade Water and Sewer Department, to extend contract duration, to execute change orders and to settle claims without need for prior Board approval; providing for ratification of all actions on a quarterly basis

This substitute differs from the original as follows:

- (1) In Paragraph 4(a)(i), for purposes of the Department's authority to award a contract, the allowable percentage over the estimated base contract amount was reduced from 20% to 10%.
- (2) In Paragraph 4(e)(i), for purposes of the Department's authority to negotiate change orders or settlements, the allowable change order cannot exceed 10% of the contract price rather than 20%.
- (3) In Paragraph 4(j), a requirement was added that all procurement items that fall under this Ordinance that are advertised or publicly noticed must be reported to the full BCC after being reported to the Infrastructure and Capital Improvements Committee. Additionally, in this Paragraph, a reference to a successor committee to ICIC was added.
- (4) Paragraph 4(k) was added, which requires WASD to request the Chair of the Board to add a discussion item to the full Board agenda concerning WASD procurement once a quarter.
- (5) An effective date provision was added as Section 5.
- (6) A 1-year sunset provision was added as Section 6.

The accompanying ordinance was prepared and placed on the agenda at the request of Co-Prime Sponsors Commissioner Esteban L. Bovo, Jr. and Commissioner Barbara J. Jordan, and Co-Sponsor Commissioner Jean Monestime.



R. A. Cuevas, Jr.
County Attorney

RAC/Imp

Memorandum



Date: September 3, 2014

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez".

Subject: Ordinance creating Section 2-8.2.12 of the Code of Miami-Dade County; delegating to the County Mayor or Mayor's designee the authority to advertise, award, amend and negotiate contracts for goods and services, construction and professional services for the Miami-Dade Water and Sewer Department, to extend contract duration, to execute change orders and to settle claims without need for prior board approval; providing for ratification of all actions on a quarterly basis

The implementation of this proposed ordinance will accelerate the procurement process of all approved Water & Sewer Department capital construction projects. If approved, this ordinance is not expected to have a negative fiscal impact to Miami-Dade County.

A handwritten signature in black ink, appearing to read "Alina Hudak".

Alina Hudak
Deputy Mayor

Fis7814




MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: September 3, 2014

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 7(B)

Please note any items checked.

- _____ "3-Day Rule" for committees applicable if raised
- _____ 6 weeks required between first reading and public hearing
- _____ 4 weeks notification to municipal officials required prior to public hearing
- _____ Decreases revenues or increases expenditures without balancing budget
- _____ Budget required
- _____ Statement of fiscal impact required
- _____ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- _____ No committee review
- _____ Applicable legislation requires more than a majority vote (i.e., 2/3's _____, 3/5's _____, unanimous _____) to approve
- _____ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(B)
9-3-14

ORDINANCE NO. _____

ORDINANCE CREATING SECTION 2-8.2.12 OF THE CODE OF MIAMI-DADE COUNTY; DELEGATING TO THE COUNTY MAYOR OR MAYOR'S DESIGNEE THE AUTHORITY TO ADVERTISE, AWARD, AMEND AND NEGOTIATE CONTRACTS FOR GOODS AND SERVICES, CONSTRUCTION AND PROFESSIONAL SERVICES FOR THE MIAMI-DADE WATER AND SEWER DEPARTMENT, TO EXTEND CONTRACT DURATION, TO EXECUTE CHANGE ORDERS AND TO SETTLE CLAIMS WITHOUT NEED FOR PRIOR BOARD APPROVAL; PROVIDING FOR RATIFICATION OF ALL ACTIONS ON A QUARTERLY BASIS; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, the Miami-Dade Water and Sewer Department is responsible for the provision of water and sewer services throughout Miami-Dade County to over 2.2 million people, including approximately 428,000 retail water customers and 346,000 retail wastewater customers; and

WHEREAS, the water and sewer infrastructure throughout Miami-Dade County is deteriorating and in need of repair, replacement and restoration in order to continue to provide the citizens of Miami-Dade County with reliable water and sewer service and comply with federal, state and local regulatory laws; and

WHEREAS, on May 21, 2013, this Board approved a Consent Decree with the United States Environmental Protection Agency, Florida Department of Environmental Protection and the State of Florida, which requires the County to perform improvement projects on the wastewater system to bring the County into compliance with the Clean Water Act, discharge permits and State environmental laws ("Consent Decree Work"); and

WHEREAS, this Board desires to accelerate the processing, procurement and award of contracts in the most responsible, efficient and expedient manner possible to ensure timely performance of Consent Decree Work and other projects required to maintain the operational effectiveness and capacity of the water and sewer systems; and

WHEREAS, this Board is committed to providing opportunities to small and local businesses with the use of this accelerated process for all projects to maximize participation as available,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 2-8.2.12 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

**Sec. 2-8.2.12. Miami-Dade Water and Sewer Department
Consent Decree and Capital Improvement
Programs Acceleration Ordinance.**

- (1) This Section of the Miami-Dade County Code shall be referred to as the Miami-Dade Water and Sewer Department Consent Decree and Capital Improvement Programs Acceleration Ordinance.
 - (a) The Miami-Dade Water and Sewer Department Consent Decree Work consists all those projects needed to comply with the Consent Decree approved on April 9, 2014 by the United States District Court for the Southern District of Florida.
 - (b) The Miami-Dade Water and Sewer Department Capital Improvement Program consists of only those projects approved by the Board of County Commissioners as part of the Multi-Year Capital Plan.
- (2) The County Mayor or Mayor's designee shall, subject to the funding limitations set forth in the Multi-Year Capital Plan approved by the Board of County Commissioners, be

authorized to accelerate the processing, procurement, and award of any contract and agreement of the County for Consent Decree Work and other required Capital Improvements contracts to maintain the operational effectiveness and capacity of the water and sewer systems, including any contracts related to the purchase of goods and services, construction and professional services.

- (3) All actions taken under this Ordinance shall be subject to review by the Office of Management and Budget to ensure adequate funding for each project and that appropriate operational and maintenance funding is in place for the foreseeable future and to ensure compliance with contract documents and all applicable resolutions, ordinances, and statutes.
- (4) With respect to any Consent Decree Work or other required Capital Improvement Contract, the County Mayor or Mayor's designee is authorized to:
 - (a) Draft, Issue or Advertise Invitations to Bid, Requests for Proposals, Requests for Qualifications, Notices to Professional Consultants, or any other competitive procurement document.
 - (b) Award and reject bids, proposals, or other offers received in connection with any competitive procurement. However, in the event that any proposed award of a contract is protested, the Board of County Commissioners shall award such contract as provided for in Section 2-8.4 of the Code of Miami-Dade County and Implementing Order 3-21 governing the bid protest process. Unless previously authorized and delegated, the County Mayor or Mayor's designee may not waive competitive bids in the award of a contract without the approval of the Board of County Commissioners. The authority to award or reject is granted where:
 - i. the base value of a recommended award does not exceed the base estimate by more than

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[[~~twenty~~]] >>ten<<¹ percent [[~~(20%)~~]]
>>(10%)<<; and

- ii. the contractor or consulting firm receiving the award has a rating of 2.5 or higher in the Capital Improvement Information System (CIIS) database and has no outstanding debts, no goal deficits, and has submitted required insurance, bonds, affidavits and documentation provided for by the time of award; and
 - iii. none of the bidders have filed a timely bid protest.
- (c) Appoint selection evaluation committees to obtain professional services in accordance with Section 2-10.4 of the Code of Miami-Dade County and Section 287.055 of the Florida Statutes.
 - (d) Amend contracts and extend the time for completion of any contract for construction, materials or professional services, including waivers of liquidated damages and other compensable and/or non-compensable time extensions.
 - (e) Negotiate and settle claims, and issue settlement agreement(s) or change orders for additional work under contracts and amendments where:
 - i. the change order or claim does not exceed [[~~twenty~~]] >>ten<< percent [[~~(20%)~~]] >>(10%)<< of the base contract amount; and
 - ii. the contingency allowance shall be utilized to ensure minimal disruption in work flow and shall be documented on the appropriate contingency authorization draw. Change orders shall be submitted to replenish the contingency account in a timely manner; and
 - iii. the limitations provided in (4)(e)(i) above shall not apply to any change order or

¹ The differences between the substitute and the original item are indicated as follows: Words double stricken through and/or [[double bracketed]] are deleted, words double underlined and/or >>double arrowed<< are added.

amendment related to emergency actions impacting remediation, public safety, health requirements or recovery from natural disaster.

- (f) Re-allocate unspent monies among projects within the approved Multi-Year Capital Plan.
- (g) Apply for, execute, and receive any federal or state grant in connection with any project, and execute any ancillary documents required to effectuate such grant.
- (h) Apply for, execute and enter into joint participation agreements with any local, state or federal government entity for the completion of a project.
- (i) After providing a report on the status of Consent Decree Work and other required Capital Improvement projects to the Board at least every thirty (30) days, which report shall include the anticipated qualifications and contract measures, including Small Business Enterprise (SBE) goals and Community Business Enterprise (CBE) goals as applicable for upcoming projects, issue and evaluate Requests for Qualifications for Professional Services, if the RFQ and evaluation process is otherwise consistent with Section 2-10.4 of the Code of Miami-Dade County. In the event that the County Mayor or Mayor's designee is unable to negotiate a contract with the most qualified firm, the County Mayor or Mayor's designee is authorized to negotiate, sequentially, with the remaining firms in order of qualifications. Alternately, the County Mayor or Mayor's designee may at any time reject all qualifications received. Except as noted herein, nothing contained in this Section shall otherwise modify the substantive or procedural requirements of Section 2-10.4 of the Code of Miami-Dade County.
- (j) All procurement activities advertised or placed for public notice under the authority of this Ordinance shall be reported to the Infrastructure and Capital Improvements Committee >>(or the applicable committee to which the Miami-Dade Water and

Sewer Department matters are assigned)<< at the next available meeting for Committee review and approval. The Committee shall have the authority to require that specific projects be removed from the authority granted under this Ordinance and that the award of such projects be subject to future Committee and Board approval. >>After being reported to the applicable Committee, all procurement activities advertised or placed for public notice under the authority of this Ordinance shall be reported to the Board at the next Board meeting following the report to the Committee.

(k) In addition to the reporting requirement set forth in Section (4)(j) above, the Miami-Dade Water and Sewer Department shall also request that, at the Chair of the Board's discretion, a discussion item pertaining to the overall procurement activities of the Miami-Dade Water and Sewer Department be placed on the agenda of the full Board on a quarterly basis.<<

- (5) Any act undertaken pursuant to the authority set forth in this Ordinance is subject to ratification by the Board of County Commissioners and shall be brought directly to the Board at the next available meeting and will not be subject to the 4-Day Rule. Any resolution ratifying an act undertaken pursuant to the authority set forth in this Ordinance shall include an effective date provision that provides that it will become effective upon approval by the County Mayor of the resolution and the filing of the Mayor's approval with the Clerk of the Board, which approval may be provided before the expiration of the ten (10) day mayoral veto period. Any contract, change order, settlement, modification, adjustment, or extension granted pursuant to any authority herein shall contain a termination for convenience clause or such other provision as necessary to specify that the action is revocable if not ratified by the Board of County Commissioners. The specification shall also include a sufficient release such that, in the event that the Board of County Commissioners does not ratify such item, the contractor is not entitled to lost profits or other consequential or indirect damages; however, the contractor is eligible for payment for any work done prior to failure of the ratification.

- (6) The powers conferred in this Ordinance shall be supplemental to, and not in derogation of, any other powers or authority granted elsewhere in any ordinance, statute or resolution.

Section 2. The County Mayor is hereby authorized and directed to create bid and contract specifications to give effect to the intent of this Section.

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

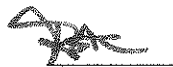
Section 4. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

>>**Section 5.** This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board, and shall apply to all contracts advertised thereafter.

Section 6. This ordinance shall, sunset in one (1) year from the effective date, unless extended by this Board.<<

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:



Prepared by:



Sarah E. Davis

Co-Prime Sponsors: Commissioner Esteban L. Bovo, Jr.

Commissioner Barbara J. Jordan

Co-Sponsor: Commissioner Jean Monestime